



BRIEFING NOTE FOR SUBCONTRACTORS ON PAYMENT PROCEDURES FOR CONSTRUCTION CONTRACTS MADE ON OR AFTER 1 OCTOBER 2012 AS PER THE HOUSING GRANTS CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY THE LOCAL DEMOCRACY ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009.

The payment procedures for construction contracts have changed. Outlined below are the two new regimes for every payment provided for by the contract:

SELF BILLING

If you are working on the basis of a self billing arrangement, then the payment process is as follows:-

- You must submit an application for payment on the application date or a few days before. (The application date should be provided for in the contract).
- No later than five days after the payment due date (which should be provided for in the contract):-
 1. The Payer (i.e. the Main Contractor) must give a 'Payer Notice' setting out the sum that they consider to be due or to have been due at the payment due date and the basis upon which that sum is calculated. (A 'Payer Notice' should be given even if the sum due is zero. If a 'Payer Notice' is issued, then this will become the 'notified sum').

Or

2. The Payee (i.e. you) give a 'Payee Notice' setting out the sum that you consider to be due or to have been due at the payment due date and the basis upon which that sum is calculated. (A Payee Notice should be given even if the sum due is zero. If a 'Payee Notice' is issued, then this will become the 'notified sum'). If you fail to give a 'Payee Notice' then your application for payment becomes the 'notified sum'.

The Contract should detail who is required to give a payment notice (i.e. the Payer or the Payee).

- If the contract requires the Payer (i.e. the Main Contractor) to file a 'Payer Notice' and it does not, then the Payee (i.e. you) must serve a 'Notice in Default' of the Payer's Notice. This may be given at any time after the 'Payer Notice' was due. This notice should set out the sum that you consider to be due or to have been due at the payment due date and the basis upon which that sum is calculated. (A 'Notice in Default' should be given even if the sum due is zero. If a 'Notice in Default' is issued, then this will become the 'notified sum').
- Where the Payee (i.e. you) give a 'Notice in default', the final date for payment shall be postponed by the same number of days as the amount of days that has passed between the deadline for giving a 'Payer Notice' and the giving of a 'Notice in Default'.
- The Payer (i.e. the Main Contractor) must pay the 'notified sum' (whether established by way of a 'Payer Notice', a 'Payee Notice' or a 'Notice in Default') by the final date for payment.
- If the Payer (i.e. Main Contractor) intends to pay you less than the 'notified sum', then he must serve a 'Pay Less Notice' by the date specified in the contract. A 'Pay Less Notice' must specify the amount that the Payer considers to be due on the date that the notice is served and the basis on which that sum is calculated (even if that sum is zero). Therefore, the Payer must re-value the work that you have done on that date. If you have not agreed a date by which any 'Pay Less Notice' should be served then period outlined in the Scheme for Construction Contracts will apply.



- A 'Pay Less Notice' will be invalid and have no effect if:-
 1. It is given before the relevant Payment Notice is due (i.e. a 'Payer Notice' or a 'Payee Notice').
 2. It is given after the final date prescribed in the contract or the Scheme for Construction Contracts (if the Scheme applies).
 3. If it does not specify in detail the reasons for withholding monies from you. Or
 4. If the Payer (i.e. the Main Contractor fails to revalue the works on the date that the 'Pay Less Notice' is issued.
- Exceptions apply in cases of insolvency.
- Where the Payer (i.e. the Main Contractor) does not pay the 'Notified Sum', then you have a right to suspend some or all of your works under the contract until such sum is paid. Any reasonable costs and expenses that you incur as a result of exercising that right is recoverable from them.

INVOICING ARRANGEMENT

If you are working on the basis of an invoicing arrangement, then the payment process is as follows:-

- You submit your application for payment on the application date or a few days before.
- No later than five days after the payment due date (which should be provided for in the contract), the Payer (i.e. the Main Contractor) must give a 'Payer Notice' setting out the sum that they consider to be due or to have been due at the payment due date and the basis upon which that sum is calculated. (A Payer Notice should be given even if the sum due is zero. If a Payer Notice is issued, then this will become the 'notified sum').
- If the Payer (i.e. the Main Contractor) does not give a 'Payer Notice' by day five, then on day six, you issue a new invoice (i.e. a 'Payee Notice in Default'). The sum that you specify in your new invoice will become the 'Notified sum' due by the final date for payment. Whilst it is possible to invoice at this stage for the entire contract sum, it is advisable that you only submit an application for the works done to date. If you do issue an invoice for the entire contract sum, then expect the Main Contractor to issue costly proceedings in the Technology and Construction Court!
- A 'Pay Less Notice' cannot be given under the invoicing regime.

HELP AND ADVICE

Should you require further clarification regarding the payment provisions under the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy Economic Development and Construction Act 2009) then please do not hesitate to contact us.

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